

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT
DIVISION TWO

S.S.,

Petitioner,

v.

THE SUPERIOR COURT OF SOLANO
COUNTY,

Respondent;

SOLANO COUNTY DEPARTMENT OF
HEALTH AND SOCIAL SERVICES,

Real Party in Interest.

A137030

(Solano County
Super. Ct. No. J41311)

Mother S.S. seeks an extraordinary writ (Welf. & Inst. Code, § 366.26, subd. (l)¹; Cal. Rules of Court, rule 8.452) to overturn two orders of the Solano County Juvenile Court in a dependency for her daughter L.A. S.S. challenges the order terminating reunification services provided her by real party in interest Solano County Department of Health and Social Services (Department) and setting a hearing at which the permanent plan for L.A. will be decided and S.S.'s parental rights possibly terminated in accordance with section 366.26. She also attacks the order directing the Department to reconsider its recommendation regarding L.A.'s placement for adoption.

¹ Statutory references are to the Welfare and Institutions Code unless otherwise indicated.

Concerning the six months of reunification services S.S. received, she contends that the court erred in concluding that the services already provided were adequate, and, moreover, that she was statutorily entitled to six additional months of services. Concerning the daughter's placement, S.S. contends that, notwithstanding just granting the foster parent's request to be upgraded to de facto parent status, the court erred in believing this new status gave the foster parent a preference in consideration for adoption. We conclude these contentions have no merit, and deny the petition on its merits.

BACKGROUND

In March 2012,² the court sustained an original petition in which it was alleged that L.A. came within the provisions of subdivision (b) of section 300 because "On January 25, 2012, the mother . . . was arrested and charged with Penal Code 647(b), Prostitution, and Penal Code 273a(b), Willful Cruelty to a Child. At the time of her arrest, the minor was unrestrained in the vehicle and in the company of two unrelated males who were arrested for Penal Code 653.23, Assisting a Prostitute, and 273a(b), Willful Cruelty to a Child. The vehicle's occupants were smoking marijuana, and the vehicle smelled of marijuana. Such conduct by the mother endangered the health and safety of the minor . . . and placed her at risk of physical harm."³

The following month, at the dispositional hearing L.A. was declared a dependent child. L.A.'s custody was moved from S.S. to the Department, with placement authorized in foster care or with a relative.⁴ The Department was ordered to provide S.S. with reunification services, and a six-month status review hearing was scheduled.

The Department decided to continue L.A.'s placement with the foster parent who had cared for L.A. since January. In July, the foster parent applied to be appointed L.A.'s

² Dates mentioned refer to the calendar year 2012 unless otherwise indicated.

³ Court also sustained an allegation of failure to support (§ 300, subd. (g)) against L.A.'s alleged father.

⁴ S.S. has relatives in Arizona, Ohio, and Texas.

de facto parent, and sought an order “maintaining the child’s current placement” to prevent the Department “seeking to place the child with nonrelatives in Ohio.”⁵

These requests came on for decision about the same time as the six-month status review, and to a large extent became intertwined. Special briefing was requested by the court, and reporter’s transcript for three hearings were generated. The following summary is confined to the issues necessary for resolution of the limited issues presented by this petition.

On September 13, Department case worker David Lara submitted his status review report for the six-month review, which was augmented with a confidential addendum report filed on October 23. The gist of these reports was that in March S.S. was unilaterally relocating to Texas “to avoid what I was doing in California”—i.e., “prostituting”—and had only sporadically communicated with the Department since then. During their most recent telephone conversation, in August, S.S. told Lara that she was unemployed and living in Wichita Falls with a friend. S.S. “reported that she had not been participating in any services.” S.S. told Lara that she was reluctant to return to California because “she doesn’t know anyone in California and . . . has no place to return to.” Lara’s only contact with S.S. was by telephone and letters; they had never had a face-to-face meeting. Communication was hampered by S.S. not always keeping Lara advised of her current address or returning his telephone calls. Further uncertainty came from S.S.’s indecision about remaining in Texas or returning to California.

⁵ The foster parent believed that the claimed relative in Ohio was a virtual stranger to L.A. and did not even qualify as a relative. The foster parent described the married woman in Ohio—Wendy S.—as L.A.’s “mother’s father’s mother’s sister husband’s niece,” and reasoned that “Section 319(f), Section 361(c)(2), Cal. Rules of Court 5.502(1) all recognize legal relatives out to the fifth degree of affinity from the child. The connection between Mrs. [S.] and [L.A.] is to the sixth degree. As such, she is not a legal relative and the [Department] should not continue to pursue placement. More importantly, the [S’s.] have no relationship with [L.A.], do not have the experience to care for her . . . needs, nor does [L.A.] know who they are. [L.A.] has never visited or lived in Ohio”

Lara advised the court that S.S. “is largely out of compliance with the case plan activities” and unable “to participate in any type of mental health or counseling services.” S.S. had failed to appear for visits and drug tests (scheduled before it was learned she had left the state), and had not even started a parenting class. S.S. “continues to state that she only uses marijuana and does not feel that it is a problem in terms of reunification with her daughter.” She had no visitation with L.A., although she did maintain “weekly contact with [L.A.] by telephone.” Lara’s conclusion was that “Parental Progress Made Toward Alleviating or Mitigating the Causes Necessitating Out of Home Placement has been: None” because S.S. “has failed to participate in any of her case plan activities Based on [S.S.]’s lack of follow through with case plan activities, failing to visit her daughter regularly, the mother’s prior Child Welfare history [i.e., five prior referrals for L.A.], and the mother’s history of prostitution,⁶ the Department does not recommend additional reunification services for the mother.”

More emphatic was Lara’s conclusion: “Before the Court is a young four-year-old child in need of a safe and stable family in her life. For the last six months the child has been in foster care waiting for her mother to engage in reunification services so that she can successfully reunify with her. However, in the last six months, the mother has utterly failed to participate in any of her case plan activities and has further complicated circumstances by moving to Texas. . . . [S.S.] has not demonstrated that she has made any progress with services and visitation in the last review period. The Department believes that it would be detrimental to the child to return her to the mother’s care at this time as there is no evidence that [S.S.] can provide for her basic needs nor provide for her safety and well-being. There is no substantial probability that [L.A.] could be returned to [S.S.] with an additional six months of services. The mother has not adequately utilized the last six months of services to any extent by engaging in services or improving her circumstances.”

⁶ Actually, it appears that S.S.’s January 25 arrest was the extent of her “history of prostitution.”

Concerning S.S.'s Texas relatives, Lara reported that "maternal great Uncle and Aunt, Sam and Barbara [M.] . . . have requested placement of [L.A.] through the ICPC⁷ process. The [M.'s] successfully completed the ICPC home study and have been approved for relative placement of the child. Mr. and Mrs. [M.] have telephone contact with [L.A.] on a weekly basis." The M.'s "raised [S.S.] . . . since she was approximately eleven-years-old until she 'married' [L.A.]'s biological father when she was seventeen." Other "maternal relatives, Wendy and Stacy[S.]," who live in Ohio, "have also requested placement . . . through the ICPC process" and "successfully completed the ICPC home study." Wendy S., a physician, "is the niece of Sam and Barbara [M.]," and "has known [S.S.] since she was a child." The S.'s have twice come to California for supervised visitation with L.A. that Lara deemed "positive."

Lara advised the court that L.A.'s "current placement remains appropriate as her caregiver is able to meet her needs and is also willing and very much wants to adopt [L.A.] if reunification fails. [L.A.] appears to be adjusting well to the placement and . . . has been bonding with the caregiver." L.A. "is the only child placed in the foster home" and "appears to have a good parent-child relationship with the caregiver." Ultimately, in his addendum, Lara recommended "that the Court . . . consider Sam and Barbara [M.] as a second plan for permanency, should the Court not approve the plan with Mr. and Mrs. [S.]," noting the M.'s "concern of their advanced age." "The placement with the [S.'s.] is supported by the [M.'s.] who intend to spend a week in the [S.'s] home with [L.A.] to assist in the transition. The placement with [S.'s] is supported by [S.S.] . . . Placement with the [S.'s.] will provide [L.A.] with a stable placement that provides her with frequent contact with her extended family in Ohio and would also permit her continued contact with [M.'s]"

On October 29, the juvenile court ordered no further reunification services be provided to S.S., granted the foster parent's request for de facto parent status, and set the

⁷ A reference to the Interstate Compact on the Placement of Children (Fam. Code, § 7900 et seq.).

permanency planning hearing for February 2013. On November 2, believing that section 366.26, subdivision (k)⁸ required that the foster parent now be given preference, the court directed the Department to reconsider its recommendation that placement be with either the S.'s or the M.'s. These are the orders S.S. hopes her petition will overturn.

REVIEW

S.S. identifies the issues as follows: “I. Mother is Entitled to Twelve Months of Reunification Services; II. The Court Erred in denying Mother Additional Reunification Services Because a Finding that She Received Reasonable Reunification Services Cannot Be Supported by a Preponderance of the Evidence; III. The Court Abused its Discretion by Granting an Order Interfering with . . . § 361.3.” Because the first two contentions share the common subject of reunification services, we address them together.

Reunification Services

S.S. explains her first contention as follows: “At the time of the petition filing, minor was four years old. Mother was entitled to twelve months of reunification services. (Welfare and Institutions Code § 361.5 (a)(1)(A).) Any motion to terminate court-ordered reunification services prior to the statutory time limit allotted *shall be made* pursuant to a motion conforming with Section 388. (Welfare and Institutions Code § 361.5 (a)(1)(C)(2).) No motion under section 388 or Form JV-180 was ever filed in this case. The Court exceeded its authority to terminate reunification services prior to twelve months.” Not true.

It is true that the language of section 361.5 appears to support S.S.—“Family reunification services, when provided, shall be provided as follows: [¶] . . . for a child who, on the date of the initial removal from the physical custody of his or her parent . . .

⁸ Which provides, in pertinent part: “Notwithstanding any other provision of law, the application of any person who, as a . . . foster parent, has cared for a dependent child for whom the court has approved a permanent plan for adoption, or who has been freed for adoption, shall be given preference with respect to that child over all other applications for adoptive placement if the agency making the placement determines that the child has substantial emotional ties to the . . . foster parent and removal from the . . . foster parent would be seriously detrimental to the child’s emotional well-being.”

was three years of age or older, court-ordered services shall be provided beginning with the dispositional hearing and ending 12 months after the date the child entered foster care” (§ 361.5, subd. (a)(1)(A).) But we have been here before.

In *In re Derrick S.* (2007) 156 Cal.App.4th 436, we examined the statutory structure of section 361.5 and stated:

“This statutory language establishes a dual-track approach based on the dependent minor’s age. If the child is under three, the default position is six months of reunification services. If the child is over three, the default position is 12 months. For both categories, the outer limit is 18 months. But none of these time periods is immutable.

“That follows from a principle noted by the court in *Aryanna C.*—‘reunification services constitute a benefit; there is no constitutional “ ‘entitlement’ ” to those services.’ ([*In re*] *Aryanna C.* [(2005)] 132 Cal.App.4th 1234, 1242; [citations].) Put even more bluntly, there is no absolute right to receive the maximum amount of statutorily-fixed services in any and all circumstances.

“This is made clear beyond doubt by subdivision (b) of section 361.5, which specifies no fewer than 15 situations in which the juvenile court is not required to order *any* reunification services. The statutory scheme for dependencies allows for reunifications services only ‘in most cases.’ [Citations.] But for dependent children over the age of three, ‘Nowhere is it provided that a *minimum* of twelve months is required. To the contrary, the emphasis throughout the statutes is upon setting outside limits to the length of time a child may be kept in foster care before a permanent plan is established.’ (*In re David H.* (1995) 33 Cal.App.4th 368, 388; see *Denny H. v. Superior Court* (2005) 131 Cal.App.4th 1501, 1510 [citing *In re David H.*].) Moreover, since 2000 it has been established that a motion pursuant to section 388 may be used to ask the juvenile court to terminate a parent’s reunification services prior to expiration of the 12-month period. (*Sheila S. v. Superior Court* (2000) 84 Cal.App.4th 872, 877–879 [upholding termination after four months of services].)

“Also pertinent is the language of subdivision (e) of section 366.21: ‘At the review hearing held six months after the initial dispositional hearing, the court shall order

the return of the child to the physical custody of his or her parent . . . unless the court finds . . . that the return of the child . . . would create a substantial risk of detriment to the safety, protection, or physical or emotional well-being of the child. . . . The failure of the parent . . . to participate regularly and make substantive progress in court-ordered treatment programs shall be prima facie evidence that return would be detrimental. In making its determination, the court . . . shall consider the efforts or progress, or both, demonstrated by the parent . . . and the extent to which he or she availed herself to services provided.’

“After dealing with two special situations, subdivision (e) goes on: ‘In all other cases, the court shall direct that any reunification services previously ordered shall continue to be offered to the parent . . . pursuant to the time periods set forth in subdivision (a) of Section 361.5, provided that the court may modify the terms and conditions of those services. [¶] If the child is not returned to his or her parent . . . , the court shall determine whether reasonable services that were designed to aid the parent . . . have been provided to the parent. . . . The court shall order that those services be initiated, continued, or *terminated*.’ (Italics added.)” (*In re Derrick S.*, *supra*, 156 Cal.App.4th 436, 444-446, fns. omitted.)

From our reading of the statutory language, we agreed with *Aryanna C.* that “ ‘the juvenile court has the discretion to terminate the reunification services of a parent *at any time after it has ordered them*, depending on the circumstances presented.’ ” (*In re Derrick S.*, *supra*, 156 Cal.App.4th 436, 447, quoting *In re Aryanna C.*, *supra*, 132 Cal.App.4th 1234, 1242.) Section 361.5, we held, “does not establish an iron rule that the parent of a dependent child who is over the age of three is entitled to, and must always receive, 12 months of reunification services.” (*In re Derrick S.*, *supra*, at p. 449.)

S.S. is therefore incorrect in assuming she was categorically entitled to 12 months of reunification services, because the juvenile court always retained discretion to halt those services at an earlier moment. The next question is whether the court abused its discretion in doing so.

A juvenile court's finding that a parent was offered adequate reunification services will be upheld if supported by substantial evidence. (*In re Misako R.* (1991) 2 Cal.App.4th 538, 545.) A county social services agency or department is required to make a good faith effort to address the parent's problems through services, to maintain reasonable contact with the parent during the course of the reunification plan, and to make reasonable efforts to assist the parent in areas where compliance with the plan proves difficult. (*Armando L. v. Superior Court* (1995) 36 Cal.App.4th 549, 554-555.) Only reasonable, not ideal services are required. (*In re Jasmon O.* (1994) 8 Cal.4th 398, 425.) The adequacy of services is to be determined in light of the unique circumstances of each case. (*Mark N. v. Superior Court* (1998) 60 Cal.App.4th 996, 1011; *Robin V. v. Superior Court* (1995) 33 Cal.App.4th 1158, 1164.) "[I]n reviewing the reasonableness of the reunification services provided by the Department, we must also recognize that in most cases more services might have been provided, and the services which are provided are often imperfect. The standard is not whether the services provided were the best that might have been provided, but whether they were reasonable under the circumstances." (*Elijah R. v. Superior Court* (1998) 66 Cal.App.4th 965, 969.)

Moreover, the agency is not required to " 'take the parent by the hand and escort him or her' " through the reunification process (*In re Christina L.* (1992) 3 Cal.App.4th 404, 414); the parent must communicate with the agency and participate in that process. (*In re Raymond R.* (1994) 26 Cal.App.4th 436, 441.) "Reunification services are voluntary, and cannot be forced on an unwilling or indifferent parent." (*In re Jonathan R.* (1989) 211 Cal.App.3d 1214, 1220.) "The requirement that reunification services be made available to help a parent overcome those problems which led to the dependency . . . is not a requirement that a social worker take the parent by the hand and escort him or her to and through classes or counseling sessions. A parent whose children have been adjudged dependents of the juvenile court is on notice of the conduct requiring such state intervention." (*In re Michael S.* (1987) 188 Cal.App.3d 1448, 1463, fn. 5.)

This is S.S.'s argument: "Here, no referrals for services were made to mother after March 15, 2012. The complete lack of attempts to assist mother when she informed

the Department that she moved out of the state did not alleviate the requirement that services be provided. Here, the complete lack of services and referrals for over six months cannot be deemed reasonable.” We do not agree.

S.S. does not claim that the case plan was inadequate, or the services originally planned to implement it were misdirected. Rather, her argument assumes that the Department was required to provide those services to S.S. after she made the unilateral decision to leave California. But S.S. provides no authority to support this assumption. Nothing in section 361.5 requires a local agency to foot the entire bill for services and present them to the out-of-state parent. Case worker Lara noted he would have tried to contact Texas social service providers if she had provided a reliable residential address for S.S.. He also recounted that in one telephone conversation with S.S. he asked “if she had made efforts to contact community services that are free of charge or at a low cost for persons such as herself.” She replied that “she has not made calls or talked to any community agencies.” Lara told S.S. that “she needed to seek out those services herself” so long as she did not have “stable housing,” meaning a fixed address. S.S. seems to be under the impression that the Department had the duty to ascertain what services were available in Texas, pay for those services, and deliver them to her. This is very much the sort of hand holding not expected of a social services agency. (*In re Christina L.*, *supra*, 3 Cal.App.4th 404, 414; *In re Michael S.*, *supra*, 188 Cal.App.3d 1448, 1463, fn. 5.) It also comes close to treating reunification services as a right, which our discussion in *In re Derrick S.*, *supra*, 156 Cal.App.4th 436, demonstrated is not the case. (See also *In re Joshua M.* (1998) 66 Cal.App.4th 458, 476 [“Reunification services are a benefit, and there is no constitutional ‘entitlement’ to these services”].)

S.S.’s argument also glosses over the impact of her voluntary departure from the state, her continued use of marijuana, her own complete lack of efforts to overcome the causes for L.A. being taken into care, and, most significantly, the fact that she never asked the Department to pay for services in Texas. The juvenile court’s finding that S.S. was provided reasonable reunification services is supported by substantial evidence.

Adoptive Preference

S.S.’s final contention is that the juvenile court “abused its discretion by granting an order interfering with Welfare and Institution Code § 361.3.” That statute provides, among other things, that “In any case in which a child is removed from the physical custody of his or her parents . . . , preferential consideration shall be given to a request by a relative of the child for placement of the child with the relative.” (§ 361.3, subd. (a).)

“By its own terms . . . section 361.3 applies when ‘a child is removed from the physical custody of his or her parents’ and thus must be ‘placed’ in a temporary home, not when reunification efforts have failed” (*In re Sarah S.* (1996) 43 Cal.App.4th 274, 284.) “By its plain language, subdivision (k) of section 366.26 overrides section 361.3 when it comes to placement for *adoption*.” (*Id.* at p. 285.) “[T]he preference afforded by section 361.3 applies to placements made before the juvenile court has terminated reunification services. When reunification has failed, however, and the juvenile court has before it a proposed permanent plan for adoption, the only relative with a preference is a ‘relative caretaker’ (if there is one seeking to adopt) and the only preference is that defined by subdivision (k) of section 366.26 (that is, a preference to be first in line in the application process).” (*Id.* at pp. 285-286; accord, *Department of Social Services v. Superior Court* (1977) 58 Cal.App.4th 721, 741; see also *In re Lauren R.* (2008) 148 Cal.App.4th 841, 855 [“There is no relative placement preference for adoption”].)

By deciding to treat the foster parent as a de facto parent after reunification services to S.S. had been halted, the juvenile court correctly recognized that the Department had to reevaluate its recommendation for L.A.’s adoption because the de facto parent now qualified for the limited caretaker preference of subdivision (k). That is all the court did. The ultimate decision on L.A.’s adoption—if that is the permanent plan approved by the court next month—has yet to be made.

DISPOSITION

The petition is denied on the merits. (Cal. Rules of Court, rule 8.452(h)(1).) This decision is final as to this court forthwith. (*Id.*, rule 8.490(b)(1).) The stay heretofore issued is dissolved.

Richman, J.

We concur:

Kline, P.J.

Haerle, J.